Here's the same language divided into its primary components:

The "Larceny by Trick" Component.

to defraud the United States Department of the Treasury and the Internal Revenue Service (IRS) ... through deceit, craft, trickery and dishonest means.

The Added Mens Rea Component.

for the purpose of impeding, impairing, defeating, and otherwise obstructing the lawful functions of the IRS in the ascertainment, computation, assessment, and collection of federal taxes.

And, here is the same language, supplemented with the relevant source for each hodgepodge element:

The "Larceny by Trick" Component—Sources.

to defraud the United States Department of the Treasury and the Internal Revenue Service (IRS) [§ 371 (*defraud*)] ... through deceit, craft, trickery and dishonest means [larceny by trick, common-law; *Haas*; *Caldwell*].

The Added Mens Rea Component—Sources.

for the purpose of impeding [§ 7212], impairing [*Haas*], defeating [§ 7201; *Haas*], and otherwise obstructing [§ 7212; *Haas*] the lawful functions of the IRS [§ 7212; *Haas*] in the ascertainment [§ 7201 (valuation)], computation [§ 7201 (valuation)], assessment [§ 7201 (*payment*)], and collection [§ 7201 (*payment*)] of federal taxes. *See also Hammerschmidt*.

Title 28

Section 530B. Ethical standards for attorneys for the government.

(a) An attorney for the Government shall be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State.

(b) The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.

(c) As used in this section, the term "attorney for the Government" includes any attorney described in section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations and also includes any independent counsel, or employee of such a counsel, appointed under chapter 40.

28 U.S.C.A. § 530B (West 1993 & Supp. 2004) ("McDade Act").

Middle District of Florida Local Rules

RULE 2.02 SPECIAL ADMISSION TO PRACTICE

(b) An attorney employed full-time by either the United States, an agency of the United States, or a public entity established under the laws of the United States may appear within the course and scope of the attorney's employment as counsel without general or other formal admission.

(c) Any attorney who appears specially in this Court pursuant to subsections (a) or (b) of this rule shall be deemed to be familiar with, and shall be governed by, these rules in general, including Rule 2.04 hereof in particular; and shall also be deemed to be familiar with and governed by the Code of Professional Responsibility and other ethical limitations or requirements then governing the professional behavior of members of The Florida Bar.

M.D. Fla. R. 2.02(b), (c).

Citations to additional authority

FED. R. CRIM. P. 11, 32.

18 U.S.C.S. § 13 (Law Co-op. Supp. 2003).
18 U.S.C.S. § 3563(a) (Law Co-op. 2001).
18 U.S.C.S. § 3663A (Law Co-op. 2001).

28 U.S.C. § 3002 (2000).

31 U.S.C. §§ 321(d), 5101, 5102, 5103 (2000).
42 U.S.C.A. § 1320b-9(k) (West 2003).

Act of October 28, 1977, Pub. L. No. 95-147, § 4(c), 91 Stat. 1227, 1229 (codified as amended at 31 U.S.C. § 5118(d)(2)).

Coinage Act of 1965, Pub. L. No. 89-81, § 211(a), 79 Stat. 254, 257 (July 23).

H.R.J. Res. 192, 73d Cong. (1933) (enacted) (Sess. I, Ch. 48, June 5) (Public Res., No. 10) (48 Stat. 112, 113 (1933)) (formerly codified at 31 U.S.C. § 463) (codified as amended at 31 U.S.C. § 5118(d)(2)).

Statement of the Case

Trial Court Jurisdiction

If jurisdiction exists, 18 U.S.C. § 7.

No Evidence

On remand, the facts and the legal points merge quite a bit, especially on procedural points.

11th Circuit find "no evidence" of objection at trial.

Having (erroneously) found no evidence of trial objection, the appellate court used "plain error" for its review under *Booker*. This view (1) presumes validity in the *judgment*, [1] and (2) overlooks the very clear *Booker*-relevant trial level objections Arnold raised throughout.

Arnold finds "no evidence" of any crime at trial.

Critical conditions precedent found in *Booker* are (1) a legitimate definition of a crime, and (2) the jury's finding facts supporting the *charge*, i.e., the *judgment*.

Unless the authority to define a crime is now an executive function, and, even then, unless that executive function has been delegated to, or directly placed in the hands of, the United States Attorneys, or DOJ, generally, the so-called "Klein conspiracy" language defines no crime. Even if a "lesser included" offense exists in a "Klein conspiracy" charge, § 371 depends upon *defraud*, which is a wrongful *acquisition*. Since wrongful *acquisition* is nowhere even alleged in the Indictment, much less proved at trial, Arnold finds no evidence supporting the *charge*, much less the *judgment*.

Arnold finds "no evidence" of standing.

Even if there were some part of § 371 that applied, Arnold finds no appearance by the real party in interest at any point in that entire trial proceeding.

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[1] "The Supreme Court granted that petition, vacating our ***opinion***, and remanding the case ...." Order on Remand, p.4. (emphasis added). The Court vacated the *judgment*, not the *opinion*, not (just) the *sentence*, but the *judgment*, without which there is no (lawful) *sentence*.

Arnold finds "no evidence" of signature authority.

Arnold here raises the McDade Act issue for the first time in this direct appeal process. Arnold finds no evidence that MACKIE was ever licensed to practice law in Florida. There being no authorized signature on the threshold pleading, i.e., the Indictment, there is no threshold pleading; hence, no case, thus, ... no *judgment*.

Argument

Remedies Requested

Vacate the Judgment and Dismiss the Indictment.

Vacate the appellate *judgment*, again, and either dismiss the Indictment or remand with such instructions.

Release pending appeal.

Release Arnold pending resolution of these matters.

Summary

McDade—No authorized signature on the Indictment.

None of the three signing attorneys is Eligible to practice in Florida. Thus, there is (A) no authorized signature on the Indictment; thus (B) no authorized pleading; thus (C) no case or controversy, thus (D) no subject matter jurisdiction, thus (E) no *judgment*.

Booker standard is corrupted here.

The 11th Circuit corrupt the *Booker* standard by (1) trying to turn an unwaivable objection into a waivable one, and (2) focusing on what the *defendant* did or didn't do, rather than upon the *fact-finder's* use of the preponderance standard, thus (3) creating an unlawful and incompetent *front*-end, bright-line rule in order to avoid the *back*-end evidentiary analysis.

Booker doesn't shift the burden of proof.

There are (at least) two quintessential conditions precedent to any *Booker* analysis of a *sentence*: (1) Is the crime *legislatively* defined? (2) Is there any evidence supporting the trial *judgment*? Here, there is no

legislatively defined crime. And even if a § 371 (*defraud*) charge *could* survive as a lesser included offense in a "Klein conspiracy" charge, there is no pleading or evidence of any *defrauding*; hence, no valid *judgment*. Nothing about *Booker* changes the threshold burden of proof.

Questions 1-7 reasserted

Arnold reasserts his original petition and incorporates it by reference.

McDade Act, Lack of Signature Authority

[Raised for first time here.]

8. Was Arnold ever indicted?

No signature?—No pleading.

Without an authorized signature, there is no pleading. *See* FED. R. CIV. P. 11. Without a pleading (Indictment), there is no case or controversy, thus, no subject matter jurisdiction. *Cf. Lujan.*

Commercial entities *must* be represented.

UNITED STATES OF AMERICA cannot appear in federal court without *authorized* representation. *Cf. Rowland*, 506 U.S. at 201-03 (corporations must be represented by licensed counsel in federal courts). MACKIE is not authorized, *see* the McDade Act, because he's not licensed to practice law in Florida. [judicial notice]. <http://www.floridabar.org/names.nsf/MESearch?OpenForm>.

McDade Act disavows MACKIE's authority.

The McDade Act imposes upon an "attorney for the government" *all* ethics standards applicable to attorneys practicing in the state courts, which state ethics standards start with the threshold question of admission to practice. FLA. BAR BYLAW 2-2.1. FLA. BAR RULE 11-1.10. Since MACKIE is an "attorney for the government," and since he was never admitted to practice in Florida,

[judicial notice], he acts in flagrant violation of the McDade Act. Thus, MACKIE has no signature authority, thus no representation authority, of ***any*** client in ***any*** (federal) court in Florida.

Same with BURCH and MORRIS.

The Indictment contains signatures of three attorneys: MACKIE, BURCH and MORRIS. BURCH, like MACKIE, is not even listed on the roll of the Florida Bar; hence, no signature authority.

There is a THOMAS EDWARD MORRIS listed on the roll, but as "Not Eligible to practice in Florida."

MORRIS signed for KLINDT. At the time, KLINDT was the Deputy Managing Assistant U.S. Attorney. KLINDT is both listed on the roll of the Florida Bar and Eligible to practice in Florida. However, while his name is *typed* on the page, his *signature* appears nowhere.

Local Rules (especially unequal and unfair ones) don't overrule Due Process, congress, etc.

A federal trial court's Local Rule, *see*, M.D. Fla. R. 2.02, which (A) allows no-permission-needed pro hac vice signature authority for those who claim to represent any of a particular group of commercial entities with national litigation exposure, yet (B) flagrantly and simultaneously denies the exact same (equal) carte blanche no-permission-needed access by those who represent all *other* commercial entities, which have equal *or greater* national litigation exposure, does not overrule (1) Due Process, *see Ballard* (Tax Court Rule 183 sure didn't save the Tax Court!) (*cf.* Dissent), *Waters* (Due Process overrules Local Rules), *or* (2) the congress, e.g., the McDade Act, *or* (3) this Court, *or* (4) the Supreme Court of Florida. *See* FLA STAT. ANN. §§ 454.021 & 454.11 (UPL).

Conclusion—Arnold was never indicted.

Since there is no authorized signature on the Indictment, there is no Indictment.

Therefore, there is no case or controversy, thus no subject matter jurisdiction, thus no trial *judgment*.

Booker Clarification

9. Does *Dowling* (11th Cir. 2005) improperly limit *Booker*?

Error v. "reversible error."

There's a difference between (A) recognizing error and (B) determining whether the error rises to the level of being reversible. To permit blurring of these lines is dangerous in all matters, and seemingly all the more so where one's liberty is at issue.

This Question looks at the standard applied, thus to the threshold evaluation of the existence of error. The next Question applies the proper standard to determine whether the error is reversible.

Use of the preponderance standard for fact-finding in "criminal proceedings" is *always* error.

To incarcerate someone based upon facts found via the preponderance standard ***always*** violates Due Process. *Apprendi*; *Blakely*; *Booker*. This point is the essence of this entire line of *Apprendi* cases. *See also Jones*. Thus, the evidentiary standard is one of the most critical distinctions between civil and criminal proceedings. Where the fact-finder looks to the preponderance standard, the proceeding is *civil* in nature; to the "beyond a reasonable doubt" standard, *criminal*.

Although the communists among us would love it if we abandoned Due Process and the "beyond a reasonable doubt" standard, it is *still* the case that this standard is structural in this state. A court's failure to use the proper evidentiary standard in an allegedly "criminal proceeding" is an error that *cannot* be waived by failure to assert it overtly at the trial level. *Blakely*; *Booker*.

Thus, the 11th Circuit are simply dead wrong where they conclude in *Dowling* that a defendant must assert the *Booker* objection (fact-finder's use of preponderance standard at trial (sentencing)) in order to preserve the

objection. Even without both *Blakely* and *Booker*, such "conclusion" is nuts on it face. They label the objection by various descriptions, including "*Apprendi*," "Sixth Amendment" and "judge as fact-finder," none of which "magic word" labelings really depicts the problem at issue, which may explain this case. By whatever mislabeling, it is impossible for any defendant in any "criminal proceeding" to waive at any time by any means the objection to the fact-finder's use of the preponderance standard. *Apprendi*; *Blakely*; *Booker*. Whether the error is overtly preserved in the way Apprendi preserved it, or not, the fact-finder's use of the preponderance standard to find facts by which to incarcerate someone is ***always*** error as a matter of law, thereby ***always*** triggering review, whether by a *de novo* or a "plain error" standard.

The application, in context.

To complete the thought, in context, the ***only*** way such error is harmless is where the sentence determined by incompetent "evidence" ends up coming within the lawful range determined by the competent evidence. *Cf. Fanfan*. Where the appellate courts are, or get, sick of doing the trial courts' analyses and jobs for them, the number of remands will increase until the trial courts consistently apply the proper evidentiary standard. [2]

Here, rather than correcting the tri courts, the 11th Circuit solve the issue of systemic violations of defendants' rights by the trial courts by rewriting the standard so as to justify blaming the defendant. The 11th Circuit want to terminate the error analysis on the *front* end with a bright line rule along these lines: "Did the defendant clairvoyantly object to an unwaivable problem before that problem even had a chance to exist?" Clearly, such a standard *will* provide consistent and very predictable results. However, the ***law*** of this state

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[2] *Booker* is ***not*** about *mandatory* guidelines alone. Compelled or not, *use of the preponderance standard* for sentencing is ***illegal***.

compels a *very* different front-end question: "Did the trial court apply a preponderance standard by which to justify incarcerating someone?" Where that is Yes, ***there is unwaivable error, as a matter of law***, and the analysis continues with inquiry into the *back*-end matter: "What sentence, if any, does the *competent* evidence support?"

Trial cases versus plea-bargain cases.

Apprendi, *Blakely* and *Booker* are plea-bargain cases. *Dowling* and *Arnold* are trial cases.

It's a traditional part of the plea-bargain process to preserve overtly certain issues for appeal. For example, Apprendi specifically preserved generic "constitutional" objections to the "evidence" used for sentence enhancement. On appeal, that narrowed to the "Sixth Amendment" doctrine issue. However, neither Blakely nor Booker overtly preserved the evidentiary-standard issue addressed on appeal, and yet their fundamental, structural, Due Process "rights" (application of the "beyond a reasonable doubt" standard for sentencing) were fully preserved for, and recognized on, appeal. In other words, neither Blakely nor Booker specifically asserted *Apprendi*, *or* "Sixth Amendment" doctrine, *or* "judge as fact-finder" violations, and yet that very issue was (those very issues were) addressed on appeal. *But cf. Dowling* and the 11th Circuit's application of *Dowling* in this case. Per *Dowling*, neither Blakely nor Booker would have obtained review, ***at all***.

Those who demand a trial before an administrative advisory panel can't possibly be afforded *less* protection on the very same issue, i.e., application of the "beyond a reasonable doubt" standard, than those who plead guilty. So, Apprendi's plea-bargain-based, overt preservation of the right to appeal "constitutional" issues, per the normal course of plea-bargain matters, cannot possibly be used "offensively" by the courts to conclude waiver of that exact same generic set of issues by those who opt for trial. The *Apprendi*-level of specificity of objection is not overtly

asserted, by "magic words" or any other way, by those who don't face the shock of enhancement beyond the *plea-agreed* range. Further, as established by both *Blakely* and *Booker*, the fundamental, structural "right" to application of the "beyond a reasonable doubt" standard *is not waived* by lack of overt objection at trial (sentencing). *But cf. Dowling* and its application in this case.

Summary and Conclusion.

Dowling defies Apprendi, Blakely and *Booker*, reviving the very problem corrected in those cases.

The threshold *sentencing* question must remain to be whether the fact-finder found facts (A) not (1) presented at trial, (2) subject to judicial notice (e.g., prior conviction) or (3) agreed to, (B) per the preponderance standard, (C) for purposes of jailing the defendant. Such error is unwaivable error, as a matter of law. This error is *so* fundamental that it is properly raised even if for the first time in this Court on coram nobis review. The trial court literally has no subject matter jurisdiction to apply the preponderance standard in "criminal proceedings." Period.

Therefore, the 11th Circuit, via *Dowling*, corrupt the standard of review by purporting to allow authority that doesn't exist. They burden the *defendant* with formal preservation at trial (sentencing) of an error that is impossible to waive. They compel clairvoyant assertion of an objection to a fact-finding problem that doesn't even ***exist*** in the trial context, as contrasted with the plea-bargain context, until the court announces the sentence. Whether that is a blanket rule, or a matter that arises solely from these facts, it's certainly the case here.

The 11th Circuit's focus on the *defendant* is wholly, completely and defiantly misplaced. The ***judicial*** act that *causes* the damage is the *use* of incompetent (i.e., preponderance standard) "evidence" to (adjudicate and/or) incarcerate. This is unwaivable error, as a matter of law. Where that error produces an unlawful sentence (as based on competent evidence), the error is reversible.

10. Does *Booker* shift the burden of proof?

Booker's very clear conditions precedent.

The key part of *Booker* that applies here is its most obvious condition precedent. The jury found *evidence* that supported the *charge*, thus the *judgment*.

Booker's trial Record *satisfies* two critical condition precedents to imposing sentence, namely (1) a legitimate (*legislatively* defined) charge, and (2) *evidence* in support of the *judgment*. In short, Arnold finds nothing about *Booker* that negates plaintiff's burden (A) to charge a *legislatively* defined offense or (B) to prove that offense.

Ultimately, Arnold finds nothing about *Booker* that negates the presumption of innocence. [3]

No legislatively defined offense.

Arnold addressed in the original petition the non-statutory, non-legislative origin of this monstrosity called the "Klein conspiracy." No trial court ever has subject matter jurisdiction over a "Klein conspiracy" charge.

No lesser-included offense.

Arnold addressed in the original petition the non-existence of any lesser-included offenses in a non-crime charge. But, even if a § 371 (*defraud*) charge were to survive, there is "no pleading," which perfectly matches the "no proof," of any *defrauding*. There is not one ounce of property "of the United States or any agency thereof" *wrongfully acquired* by anyone charged in the Indictment.

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[3] It is not lost that in this state there comes a time where the practicality of the business model obliterates the jurisprudence model, on the front end. To view the risk of loss through risk management's glasses, some risks are small to immeasurable when contrasted with the alternative. Even still, have this Court not already taught by example the competent way to handle this matter?! Was *Booker* not a *very* creative and effective method to balance the risk of loss?!

Why, then, do the 11th show not the *slightest* good faith effort or intent to mitigate those damages? There *is* an answer, and Elliot Ness would *very* likely understand it.

The appellate court's gross misstatement of fact and law doesn't change the case.

There are none so blind as those who ***refuse*** to see. The "opinion" on remand ***boldly*** says that Arnold "raised no such [i.e., *Booker*] claim before the district court." This is truly astounding! It's ***so*** wrong as to justify, even compel, judicial sanctions.

The 11th Circuit recognize Arnold's Affidavits, but they mention *nothing* about the thematic non-agreement that permeates those evidentiary documents. That non-agreement is *precisely* the popular *Booker* objection, and Arnold most certainly *did* raise it at trial. ***Twice!***

Since *nothing* that DOJ/IRS presented post-trial had been offered at trial, the evidentiary issue was as clear in April, 2003, as it was in June, 2004 (*Blakely*), and as it was in January, 2005 (*Booker*): does Arnold agree with or otherwise consent to this otherwise incompetent "evidence," so as to justify using it for sentencing? And, the answer is a still-resounding NO! Therefore, Arnold needed to confirm, of Record, in a form that *is* admissible evidence, that he affirmatively did not consent or otherwise agree to ***anything*** that had happened, in general; hence, the first Affidavit; then also regarding the "numerics," in particular; hence, the second Affidavit, filed immediately after receipt of those "numerics."

Key to both of those Affidavits is Arnold's 100% clarity on his lack of consent or agreement to everything, including the "numerics." Thus, it's ***unconscionable*** for the 11th Circuit to say that Arnold's Affidavits, by which he confirms his non-agreement to never-before-seen-or-heard-of "evidence," *doesn't* raise a *Booker* objection! It's ***unconscionable*** for any appellate court to compel a clairvoyant assertion ***at trial*** of "magic term" objections, e.g., "*Apprendi*," or the "Sixth Amendment," or "judge as fact-finder," to problems that don't even ***exist*** until ***after*** the trial court has concluded the "sentencing!!"

The law *may* properly burden a defendant to assert his

non-agreement. It's one objection a defendant *can* raise without having to be clairvoyant. In stark contrast, *see Dowling*, where sentencing follows *trial*, not a plea agreement, but a *trial*, and even where there's a "sentencing" "hearing," one doesn't *know* that the trial court is looking beyond the Record until the "sentence" is issued. *Again*, the damages don't *accrue* until a "sentence" based upon incompetent "evidence" *exists*. For a *third* time, this time using the 11th Circuit's "magic words," the "*Apprendi*" problem, the "Sixth Amendment" (doctrine) problem, the "judge as fact-finder" (*per the preponderance standard*) problem, just flat doesn't even *exist* until incompetent "evidence" is factored into the analysis. One *trial* level objection to *that* is called a Notice of Appeal.

Doing the 11th Circuit's job for them, from jail, *pro se*.

To do the 11th Circuit's job and apply *Booker*, review is *de novo*, not "plain error," because Arnold ***did*** raise the (popular) *Booker* objection at trial. By his *two* Affidavits in allocution, Arnold clearly asserted his non-agreement to all incompetent trial and post-trial "evidence."

Is there error per *Booker*? Yes. The trial court, as fact-finder, looked beyond the Record and ***applied the preponderance standard*** to make post-trial factual determinations that were factored into the "sentence."

Is the error reversible? Yes. Since all **"tax"** Counts were **DISMISSED**, critical conditions precedent fail. A "Klein conspiracy" charges no crime. Even if a lesser-included offense survived a non-crime charge, there is no § 371 (*defraud*) charge. The Indictment nowhere pled wrongful *acquisition* facts. The Record certainly contains no such facts. And Arnold certainly didn't agree to any such facts post-trial. Since, for § 371, *defraud* means wrongful *acquisition*, and since there is no competent evidence of wrongful *acquisition*, it follows that plaintiff never rebutted the presumption of Arnold's innocence.

There is no *judgment*, thus, no lawful sentence. The trial court's *judgment* is vacated. So ordered.

Conclusion

The 11th Circuit multiply their errors.

In addition to the prior violations of the law of this state and of the rulings of this Court, and in addition to the prior conflicts with rulings of this Court, of other circuit courts and even of its own, as asserted in the original petition, the 11th Circuit now add to that list of violations of law and conflicts with rulings of this Court, of other circuits and even of its own.

The 11th Circuit defy Due Process and *Booker*.

By reaffirming the 30-month "sentence" [4] in the face of a void and incompetent, no-law-required, no-pleading-required, no-evidence-required trial *judgment*, the 11th Circuit openly and rebelliously defy Due Process, generally, and this Court's rulings in *Apprendi*, *Blakely* and *Booker*, among others, in particular.

The *Dowling* standard obliterates *Booker* and compels clairvoyance in jury cases.

In *Dowling*, the 11th Circuit create their own review standard, by which neither Blakely nor Booker, but Apprendi alone, would *ever* have been granted review. By its corrupted standard, the 11th Circuit turn the *non-waivable* objection, of the trial court's use of the preponderance standard for fact-finding for purposes of (adjudication and/or) incarceration, into a waivable, clairvoyance-required objection. In trial cases, the 11th Circuit require defendants to assert clairvoyantly the "magic word" objection of "*Apprendi*," "Sixth Amendment," or "judge as fact-finder," ***before*** any ***damages*** caused by a fact-finder's *use* of the preponderance standard to find facts beyond those (1) of Record, (2) judicially noticed, or (3) agreed to, ***even exist***.

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[4] From the ***30-month*** sentence, the trial court subtracted 18 months already served on the related Grand Jury matter. The 11th Circuit knowingly mischaracterize the sentence as a mere ***12-month*** sentence.

The mere existence of a "sentencing hearing" isn't the problem, either. No matter what "evidence" is presented, there is no "*Apprendi*," "Sixth Amendment," "judge as fact-finder" *problem* until the incompetent "evidence" is ***used*** for (adjudication and/or) sentencing. Incompetent "evidence" is that which is not (1) of Record, (2) judicially noticed or (3) agreed to. Thus, the defendant's post-trial *evidentiary* objection is *exactly* the objection Arnold raised by his *two* Affidavits in allocution, a year before *Blakely*, thus a year and a half before *Booker*, to the effect of, "I don't agree or consent to any of this." That *evidentiary* objection focuses specifically on the *Booker* (*Apprendi*) ***fact-finding*** issue that ***does*** exist at that stage of the proceedings, to wit: "Does the defendant agree with or consent to this otherwise incompetent 'evidence' ?"

BOOKER FOCUSES ON THE EVIDENCE, NOT CLAIRVOYANT EXPRESSION OF "MAGIC WORDS" FOR LEGAL DOCTRINES.

In this state, where "silence means consent," the *evidentiary* objection is rather much a no-brainer. Thus, the 11th Circuit's ***law-focused***, clairvoyance-required, "magic word" dependent, let's-find-a-way-to-blame-the-defendant-for-a-completely-systemic-problem standard flies in the face of the *evidentiary*, ***fact-based, fact-finding*** problem at issue in the *Apprendi* line of cases. This corrupted standard defies and even vilifies the most foundational and structural of Due Process law of this state. *Dowling* actually overrules *Apprendi*, *Blakely*, *Booker* and the other cases in this line, i.e., overrules the bedrock Due Process doctrines confirmed in and by those rulings. The 11th Circuit's mutinous, bolshevistic, blame-the-defendant, "turn the non-waivable into waivable" mentality screams from the pages of what they ***still*** call a *pro se* **"tax"** case, ***all*** of which Counts were **DISMISSED!**

THE 11TH CIRCUIT NEED REMEDIAL INSTRUCTION REGARDING THE *BOOKER* REVIEW STANDARD.

In short, the 11th Circuit's corrupted standard defies

the law of this state, the rulings of this Court and the competent rulings of other circuits. Thus, the court of appeals has (1) entered an opinion that conflicts with relevant decisions of this Court and with relevant decisions of other courts of appeals, and (2) so far departed from the accepted and usual course of judicial proceedings, and has sanctioned, tolerated, encouraged and even celebrated the same departure by the lower court, systemically, as to call for the exercise of this Court's supervisory power.

The 11th Circuit's application of its corrupted standard is unconscionable, even sanctionable.

Because the 11th Circuit look solely for clairvoyant expression of "magic words" to describe problems that don't even exist yet (at that stage of the proceedings), they ***unconscionably*** state to the world that Arnold made no *Booker* objection at trial. Even looking solely at the popular understanding of *Booker*, they assert their position while simultaneously recognizing Arnold's *two* Affidavits in allocution, specifically included with the Supplemental Brief on Remand, [5] that affirmatively assert his non-agreement to everything in sight.

Because the 11th Circuit ***refuse*** to distinguish the obvious practical differences between the plea-bargain

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[5] The first Affidavit has two Docket numbers: [1220] and [1229]. Per the Docket Sheet,[1220] is *Fleming's* first Affidavit, not *Arnold's*. Further, [1220] is filestamped "Apr 25 2003," but the official printed heading says, "Filed 04/28/2003." That exact same Affidavit, as [1229], has a *second* filestamp, "Filed in Open Court Apr 30 2003," with a printing heading that says, "Filed 04/30/2003." The [1220] is lined through with [1229] written under it. Per the Docket Sheet, Arnold's originally filed first Affidavit is not of Record. Error or scienter?

Given the trial "judge's" and clerk's overt conspiracy of Record-tampering, etc., in the revocation matter, No. 04-16353-AA, in which SCHLESINGER animated MIDDLE DISTRICT OF ***GEORGIA*** in order to arrest Arnold, whom BOP released to the community *without* supervision, and whom the 11th, TJOFLAT, J., again denied release pending appeal *without opinion*, one can't help but wonder when that Record-tampering in the MIDDLE DISTRICT OF ***FLORIDA*** started.

case and the trial case, they not only conjure a law-defying standard, but also then apply that horrifically repugnant standard via their run-amuck abandon of sensibilities.

THE 11TH CIRCUIT NEED REMEDIAL INSTRUCTION REGARDING APPLICATION OF THE *BOOKER* REVIEW STANDARD.

In short, the 11th Circuit's insolent application of its corrupted standard defies the law of this state, the rulings of this Court and the competent rulings of other circuits. Thus, the court of appeals has (1) entered an opinion that conflicts with relevant decisions of this Court and with relevant decisions of other courts of appeals, and (2) so far departed from the accepted and usual course of judicial proceedings, and has sanctioned, tolerated, encouraged and even celebrated the same departure by the lower court, systemically, as to call for the exercise of this Court's supervisory power.

Arnold was never indicted. The trial court never had subject matter jurisdiction.

The McDade Act issue is raised here for the first time in this direct appeal proceeding.

There is no authorized signature on the Indictment. All three signatories, MACKIE, BURCH and MORRIS, thumb their noses at Due Process, congress (the McDade Act), this Court and the Supreme Court of Florida. The trial court has ***strongly*** protected, even encouraged, that defiance, claiming that the Local Rule covers it. Why should DOJ set up any uniform policy, much less monitor it, where the trial courts, themselves, defy congress?

Whether a Local Rule overrules (i.e., spits upon and tramples under foot) the McDade Act is an important question of federal law that has not been, but should be, decided by this Court.

Remedies Requested

Arnold requests

1. That this Court grant this supplemental petition, issue the writ of certiorari and take jurisdiction of this matter;
2. That he be released pending appeal;
3. That this Court vacate the judgment on remand, and, ultimately, vacate the trial court judgment and dismiss the Indictment;
4. As much clarification of (A) the *Booker* standard, and (B) its application, as this matter may allow;
5. As much specificity of the relationship between the McDade Act and Local Rules as this matter may allow;
6. The opportunity to brief any additional issues the Court may identify;
7. The non-argument calendar. Oral argument is not expected to aid in the resolution of these issues;
8. That costs be taxed to the 11th Circuit; and
9. Any and all other relief at law, in equity or sui generis to which he may show himself justly entitled.

Respectfully submitted,

WILLIAM ALLEN ARNOLD
C/O 3338 SUMMERCHASE COURT
COLUMBUS, GEORGIA 31909

Presently,
William Allen Arnold, No. 94241-071
2225 Haley Barbour Parkway
Yazoo City, Mississippi 39194

Appendix A
Table of Contents

Rule 14.1(i)(i)—Appellate Opinion on Remand

2005 Aug 17

[DO NOT PUBLISH]

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
AUGUST 17, 2005
THOMAS K. KAHN
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-12810
Non-Argument Calendar

D. C. Docket No. 00-00262-CR-3-J-20HTS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM ALLEN ARNOLD,

Defendant–Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(August 17, 2005)

ON REMAND FROM THE
SUPREME COURT OF THE UNITED STATES

Before CARNES, BARKETT and MARCUS, Circuit Judges.
PER CURIAM:

[⊥2] The appeal of William Allen Arnold, pro se, is again before us, following a remand from the Supreme Court of the United States for further consideration in light of United States v. Booker, 125 S. Ct. 783 (2005). See Arnold v. United States, 125 S. Ct. 2527 (2005). We previously affirmed Arnold's conviction and twelve-month sentence for conspiring to defraud the United States, in violation of 18 U.S.C. § 371. United States v. Arnold, 125 Fed. Appx. 269 (11th Cir. 2004). After review, we conclude that because Arnold raised a Booker-type claim in his initial brief on appeal, but raised no such claim before the district court, we can review his sentence only for plain error. However, because Arnold has not demonstrated a reasonable probability of a different result under the post-Booker advisory guidelines system, we again affirm Arnold's sentence and reinstate in part our prior opinion.

BACKGROUND

After the jury returned a guilty verdict, the Pre-Sentence Investigation Report ("PSI") calculated $217,586.00 as the total tax loss attributable to Arnold's role in the conspiracy. Using this loss amount, the PSI recommended a base offense level of sixteen, pursuant to U.S.S.G. § 2T1.1(a)(1). The PSI also recommended a two-level enhancement for obstruction of justice, pursuant to [⊥3] U.S.S.G. § 3C1.1, due to Arnold's continued refusal to comply with grand jury proceedings - conduct that ultimately resulted in a criminal contempt conviction. With an adjusted offense level of 18 and a criminal history category of I, the PSI calculated his guidelines' imprisonment range at 27 to 33 months.

Arnold filed a pro se affidavit stating his objections to the PSI. His extensive objections largely concerned allegations that the district court lacked jurisdiction, as well as his related quasi-constitutional claims regarding the Internal Revenue Service and Social Security

Administration. While Arnold did repeatedly object to the tax loss amounts calculated, he did not do so based on the judge's determination of the tax loss or jury's failure to find the tax amount. Arnold's affidavit also failed to reference the Sixth Amendment or any cases in the line of Apprendi v. New Jersey, 530 U.S. 266 (2000).

At the sentencing hearing, Arnold refused to address the district court regarding his objections, repeatedly stating that he would remain silent and stand on the objections contained in his previously-submitted affidavit. He explicitly declined to be heard on the issue of tax loss calculations.

The district court ultimately overruled any objections and adopted the PSI's factual findings and guideline calculations. However, the district court then departed downward pursuant to U.S.S.G. §5G1.3, because Arnold had already [⊥4] served 18 months for criminal contempt based on his failure to cooperate with the grand jury proceedings. The district court ultimately sentenced Arnold to twelve months' imprisonment and two years' of supervised release.

On appeal, Arnold, again proceeding pro se, raised a variety of claims concerning his conviction and sentence. In relevant part, Arnold again objected to the district court's tax loss calculation on several grounds, including a claim that his "sentence is not lawful" because it was "based upon [tax loss] 'numerics' ... conjured *after* trial, for a charge never even alleged, much less tried." Appellant Br. at 50 (emphasis in original). Arnold argued that imposing such a sentence where the tax loss amount was neither charged nor tried, would "rocket-sled through the due process barrier at light speed." Id.

We affirmed Arnold's conviction and sentence, finding the tax loss amount used by the district court in sentencing was a reasonable estimate of the tax loss during the time of Arnold's involvement in the conspiracy. Arnold, 125 Fed. Appx. 269. Arnold then filed a petition

for a writ of certiorari with the Supreme Court. The Supreme Court granted that petition, vacating our opinion and remanding the case for further consideration in light of Booker. Arnold, 125 S. Ct. 2527. [⊥5]

STANDARD OF REVIEW

While Arnold asserts that he raised the Booker issue both at trial and on direct appeal, the record does not support this assertion. Arnold's sentencing "affidavit" did not object to the district court's estimation of the tax loss under the preponderance standard, raise his jury trial rights under the Sixth Amendment, nor cite to any case in the Apprendi line. See United States v. Dowling, 403 F.3d 1242, 1246 (11th Gr. 2005) (holding that appellant's non-constitutional sentencing objection failed to preserve Booker error, where the objection made no reference to the Sixth Amendment, the role of judge as fact-finder, the right to jury determination of disputed facts, or the Apprendi line of cases).

However, when reviewed under the liberal standards applicable to pro se arguments, see Mederos v. United States, 218 F.3d 1252, 1254 (11th Cir. 2000), Arnold's initial brief on appeal does appear to raise a Booker-type claim. Specifically, Arnold argued that his sentence violated constitutional due process guarantees because the tax loss amount was never tried before the jury, but instead was calculated after trial. Appellant Brief at 50. Given our obligation to liberally construe pro se filings, we hold that Arnold's appellate-brief arguments are sufficient to raise the Booker issue. Nonetheless, because Arnold did not raise any such issue below, we review his Booker claim only for plain error. United States [⊥6] v. Rodriguez, 398 F.3d 1291, 1297 (11th Cir. 2005), cert. denied, 125 S. Ct. 2935 (2005).

DISCUSSION

Under plain error review, appellate courts have a

limited power to correct errors that were not timely raised in the district court. United States v. Olano, 507 U.S. 725, 731 (1993). We may not correct such an error unless: (i) there is error; (ii) it is plain; and (iii) it affects substantial rights. Id. If these three conditions are met, we may exercise our discretion to correct the error if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. Id.

In this case, the district court committed both constitutional and statutory Booker errors when it sentenced Arnold under a mandatory guidelines system based upon facts (the tax loss amount and Arnold's obstruction of justice) that were neither admitted by Arnold nor proven to a jury beyond a reasonable doubt. Booker, 125 S. Ct. at 756. Though this error was not apparent at the time of sentencing, under Booker it is now plain. Rodriguez, 398 F.3d at 1299.

However, it does not appear that under the third prong of the plain-error test, Arnold's substantial rights have been affected. The third prong of plain error review requires Arnold to demonstrate that absent the error, there is a reasonable probability of a different result. Id. Where the effect of the error is indeterminate [1.7] or if we would be left to speculate, that burden has not been satisfied. Id. at 1301. A close review of the record reveals no suggestion that the district court would have imposed a lower sentence under the post-Booker advisory sentencing system. As such, Arnold has failed to demonstrate that the Booker error affected his substantial rights. See United States v. Cartwright, 413 F.3d 1295, 1301 (11th Cir. 2005).

Accordingly, we reinstate our prior opinion with the exception of our discussion of the district court's tax calculation, for which we substitute the foregoing.

OPINION REINSTATED IN PART; AFFIRMED.

Rule 14.1(i)(ii)—Additional Orders

None

Rule 14.1(i)(iii)—No Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—No Judgment of different date

No judgment of date different from the opinion.

Rule 14.1(i)(v)—Statutes and Rules

See language included in the petition.

Rule 14.1(i)(vi)—Additional Essential Materials

Indictment signatures

A TRUE BILL

/s/ Philip C. Land[rum?]
FOREMAN

DONNA A. BUCELLA
United States Attorney

/s/ A Wm Mackie
A. WILLIAM MACKIE
Assistant United States Attorney

/s/ Barbara Burch
BARBARA BURCH
Trial Attorney, U.S. Department of Justice

/s/ Thomas E. Morris for
JAMES R. KLINDT, Deputy Managing
Assistant United States Attorney

Exemplary *Booker*-relevant paragraphs in Arnold's Second Affidavit [1232]

Both the first and second "offers" are rejected.

34. The first "offer" presented to me was rejected in its totality as of 25 April 2003. The second "offer" presented to me as of 30 April 2003 is hereby formally also declared as rejected. The second "offer," conspicuously attempting to elevate me to the level of principal, confesses the abandonment of the first. As regards the second, there is no proper "notice" (i.e, no "indictment," which individual right I could waive and negotiate away, but have no intention of waiving or negotiating away), no "service of process," and no "plea" is or shall ever be offered. The sole evidentiary value of the second "offer" is its existence. I have no intention of negotiating any of these matters at any time. Thus, there will be no agreement, except on the point of disagreeing.

35. Therefore, and in general, for all purposes regarding the presently closed transaction(s) in this forum, I still have zero intention of negotiating this matter or agreeing to any arbitration or mediation. Any subsequent appearance at any time or in any place as regards this matter in no way operates to alter any intention here expressed.

Further, this Affiant sayeth not.

Signed and witnessed to (or attested to) before me on this the *1st* day of *May*, 2003, by *William A. Arnold III*

/s/ William A. Arnold III
William A. Arnold III, Affiant

/s/ Janet A. Brown *4*
Notary Public *5-1-03*
JANET A. BROWN [seal]